EXECUTIVE SECRETARIAT

ROUTING SLIP

TO:			ACTION	INFO	DATE	INITIAL
	1	DCI		X		
	2	DDCI		X		
	3	EXDIR		X		
	4	D/ICS				
	5	DDI		X		
	6	DDA				
	7	DDO		X		
	8	DDS&T				
	9	Chm/NIC				
	10	GC		X		
	11	IG		X		
	12	Compt				
	13	D/OCA		X		
	14	D/PAO		X		
	15	D/PERS				
	16	D/Ex Staff				
	17	C/LA/DO		X		
	18	C/NE/DO		X		
	19	Counsel to DCI		X		
	20					
	21					
	22					
		SUSPENSE _____ Date				

Remarks

Per D/OCA, no answer is expected or required.

STAT _____

Executive Secretary

30 Mar '88

Date

From: John Helgerson

28 MAR 1988

___We plan to prepare an answer for your signature.

___We plan to prepare an answer for my signature.

✓

___No answer expected or required

___John, I prefer to_____

_____

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Senate

INTELLIGENCE OVERSIGHT ACT

Mr. MOYNIHAN. Mr. President, I rise in support of the Intelligence Oversight Act of 1988. I do so with considerable pride in this body, in the Senate Select Committee on Intelligence, in its distinguished chairman, Senator DAVID L. BOREN, and its distinguished vice chairman, Senator WILLIAM S. COHEN who have produced this measure.

I rise also with a sense of the precariousness and tentativeness of all institutions, not least those of government. The Intelligence Oversight Act of 1988 is our first major legislative response to the Report of the Congressional Committees Investigating the Iran-Contra Affair. In the history of the American Republic, I do not believe there has ever been so massive a hemorrhaging of trust and integrity. The very processes of American Government were put in harm's way by a conspiracy of faithless or witless men: sometimes both.

In the course of those hearings our learned and incisive colleague, PAUL SARBANES of Maryland, began using the term "junta" to refer to individuals engaged in the assorted conspiracies that are subsumed under what we have come to call Iran-Contra. In an extraordinary series of articles in the New York Review of Books, one of which is entitled "The Rise of the American Junta," Theodore Draper noted that when Senator SARBANES began using that term "Secretary of Defense Caspar Weinberger did not demur at its use."

Draper begins his series with this portentous summation:

> If ever the constitutional democracy of the United States is overthrown, we now have a better idea of how this is likely to be done.[1]

I would note that Mr. Draper is a scholar of great eminence whose special interest has been the rise of totalitarian governments, especially totalitarian Marxist-Leninist governments.

I was present at the outset of this challenge to American constitutional government. I am witness to the first acts of deception that gradually mutated into a policy of deceit.

I saw a program of opposition to subversion abroad transformed into a policy of subversion at home.

I would wish to share this witness with the Senate today, and especially with the managers of this legislation.

Specifically, I became a member of the Senate Select Committee on Intelligence in 1977, the second year of its existence and the first of my service in the Senate. I was clearly a junior member, but well recall my conversation with the then-chairman, the distinguished Senator for Hawaii, Mr. INOUYE. I was, he said, and as I suppose I still am, the only member of the body to have served as an American Ambassador—in India and at the United Nations—and thus had direct experience with the intelligence services. Hence, I might be of some use to my otherwise more experienced col-

leagues. I was happy to accept Senator INOUYE's invitation.

Four years later I became vice chairman, serving opposite a revered friend, Barry Goldwater of Arizona. Might I note for others who might read these words that only in the most special circumstances do Senate committees have a vice chairman, who presides in absence of the full chairman. This is, among other things, a charge to the strictest bipartisanship.

Now the essence of the legislation concerning oversight by the House and Senate Committees was that Congress be informed in advance of important covert actions. More specifically, the Intelligence Oversight Act of 1980 established the principle that the Intelligence Committees would be kept "fully and currently informed of all intelligence activities" within the responsibility of the CIA, including any "significant anticipated intelligence activity." Moreover, the Intelligence Authorization Act for fiscal year 1981 amended the Foreign Assistance Act of 1961 to make clear that "each operation conducted by or on behalf of the Central Intelligence Agency in a foreign country, other than activities intended soley for obtaining necessary intelligence, shall be a significant anticipated intelligence activity * * *" There was also a provision that if a matter of great urgency and sensitivity was involved, the President could inform the Congress in a timely fashion, and he need only inform the chairman and vice chairman of the Intelligence Committees, the Speaker, House minority leader and majority and minority leaders of the Senate.

This was an exception provided for situations of great urgency or great delicacy, and was understood by all. The committee, for example, was not told in advance of the Iran rescue effort of April 25, 1980. Nor need we have been. But these are special occasions; most intelligence is routine, and soon a routine seemed in place.

On the occasion that our great good friend EDWARD P. BOLAND finished his 8-year term on the House Select Committee on Intelligence, there was a reception. I was asked to speak briefly and said this: It being well established that in order for an activity in the executive branch to flourish, it needs a pair of committees in the Congress to look after it, future historians would wonder that it took almost a generation for something called the Intelligence community to figure this out.

For indeed the intelligence community did flourish. Budgets grew—beginning in the Carter administration—as never before. And trust burgeoned. Or such was my impression.

An informal practice commenced of the CIA briefing only the chairman and vice chairman in situations of special sensitivity, leaving it to them to decide whether to brief the full committee.

I can further attest that during my 4 years as vice chairman, these briefings were frequent—sometimes to the point of seeming endless. Some had a measure of the dramatic: I was summoned from a lecture hall at the Woodrow Wilson Center in the Smithsonian Building to be told of the impending invasion of Grenada. I was happy to have the information, although I recall asking the then-Deputy Director of the Agency in what sense this was to be a covert operation. No matter; the briefings grew more extensive and were, I think, useful to the community. On more than one occasion a particularly exotic notion failed to survive Senator Goldwater's incredulity. Well, that is what oversight is supposed to be.

Then came The Fall.

For reasons not as yet fully understood, and in any event not central to this discussion, the Reagan Administration decided to involve the United States directly in the conflict in Nicaragua. Specifically, on January 7, 1984, magnetic mines were placed in Sandino Harbor under the direction of the Central Intelligence Agency.[2]

By any standards, this was a significant event. It was arguably a belliger-

ent act, and a violation of international law. (The International Court of Justice has so ruled.) In any event, it was something the Intelligence Committees should have been told about in advance, and which by any previous experience we would have expected to have been informed of in advance.

We were not.

Now to an essential detail.

Senator Goldwater and I, and I assume anyone the least interested in the area, knew full well that beginning in early January harbors were being mined in Nicaragua. Much effort was made by the Contras to publicize this fact. After all, the putative object of the mining was to keep shipping away. (I forbear comment on the dimness of using mere percussion mines, which might keep away Mexican oil tankers but would certainly not dissuade Bulgarian freighters crammed with Soviet armaments.) What we did not know was that this mining was carried out by the United States. This was concealed from us.

On April 6, 1984, this fact was revealed in the Wall Street Journal in an article by David Rogers.

UNITED STATES ROLE IN MINING NICARAGUAN HARBORS REPORTEDLY IS LARGER THAN FIRST THOUGHT

WASHINGTON.—The Reagan administration's role in the mining of Nicaraguan harbors is larger than previously disclosed, according to sources who say that units operating from a ship controlled by the Central Intelligence Agency in the Pacific participated in the operation.

Though anti-Sandinista insurgents have claimed credit for the mining, a source familiar with CIA briefings on the operation said that the units operating from the ship are self-contained, and are composed of Salvadorans and other Latin Americans from outside Nicaragua * * *

The Senate Intelligence Committee hasn't had a full briefing on the operation, but CIA Director William Casey recently appeared before the House Intelligence Committee, where details of the mining were apparently first disclosed to Members of Congress.[3]

This news came as a shock to Senator Goldwater and to me. We had felt a system was in place; we realized it was not. On April 9, Senator Goldwater sent a public letter to Mr. Casey.

UNITED STATES SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, April 9, 1984.

Hon. WILLIAM J. CASEY,
Director of Central Intelligence, Washington, DC.

DEAR BILL: All this past weekend, I've been trying to figure out how I can most easily tell you my feelings about the discovery of the President having approved mining some of the harbors of Central America.

It gets down to one, little, simple phrase: I am —— off!

I understand you had briefed the House on this matter. I've heard that. Now, during the important debate we had all last week and the week before, on whether we would increase funds for the Nicaragua program, we were doing all right, until a Member of the Committee charged that the President had approved the mining. I strongly denied that because I had never heard of it. I found out the next day that the CIA had, with the written approval of the President, engaged in such mining, and the approval came in February!

Bill, this is no way to run a railroad and I find myself in a hell of a quandary. I am forced to apologize to the Members of the Intelligence Committee because I did not know the facts on this. At the same time, my counterpart in the House did know.

The President has asked us to back his foreign policy. Bill, how can we back his foreign policy when we don't know what the hell he is doing? Lebanon, yes, we all knew that he sent troops over there. But mine the harbors in Nicaragua? This is an act violating international law. It is an act of war. For the life of me, I don't see how we are going to explain it.

My simple guess is that the House is going to defeat this supplemental and we will not be in any position to put up much of an argument after we were not given the information we were entitled to receive; particularly, if my memory serves me correctly, when you briefed us on Central American just a couple of weeks ago. And the order was signed before that.

I don't like this. I don't like it one bit from the President or from you. I don't think we need a lot of lengthy explanations. The deed has been done and, in the future, if anything like this happens, I'm going to raise one hell of a lot of fuss about it in public.

Sincerely,

BARRY GOLDWATER,
Chairman.

Three days after that Mr. Bud McFarlane, then National Security Advisor, gave an address at the Naval Academy in which he stated that "Every important detail of [the mining operation] was shared in full by the proper congressional oversight committees."

The same day, Mr. Casey issued the following Employees Bulletin to CIA employees:

APRIL 12, 1984.

EMPLOYEE BULLETIN

RECENT PRESS ARTICLES

1. Knowing that all Agency employees are interested in a number of recent press articles saying that the Agency had not briefed Congress on covert action programs in Central America, it is important for all of us to know the facts.

2. What you may have read in the press on this subject is not true. In accordance with prevailing practice, the Agency did indeed brief our two Oversight Committees on the matters discussed in the press during this week. In particular:

a. We briefed the members of the House Permanent Select Committee on Intelligence (HPSCI) on 31 January and 27 March 1984.

b. We briefed the members of the Senate Select Committee on Intelligence (SSCI) on 8 March and again on 13 March 1984;

c. In addition, we responded to specific detailed questions on these activities to individual Senators on 28 and 30 March, and briefed the SSCI staff members in detail on 2 April 1984;

d. Also, we have over the past several months replied in writing to written questions on this activity from the SSCI and the HPSCI.

3. In sum, we have fully met all statutory requirements for notifying our Intelligence Oversight Committees of the covert action program in Nicaragua. This Agency has not only complied with the letter of the law in our briefings, but with the spirit of the law as well.[4]

WILLIAM J. CASEY,
Director of Central Intelligence.

A report of Mr. McFarlane's Naval Academy address appeared in the Washington Times on April 13: "McFarlane Says Hill Knew About Mining."

On April 15, I announced that I would resign as Vice Chairman:

I have announced today that I will resign as Vice Chairman of the Senate Select Committee on Intelligence.

This appears to me the most emphatic way I can express my view that the Senate Committee was not properly briefed on the mining of Nicaraguan harbors with American mines from an American ship under American command.

An Employee Bulletin of the Central Intelligence Agency issued April 12 states that the House Committee was first briefed on 31 January, but the Senate Committee not until 8 March. Even then, as Senator Goldwater has stated, nothing occurred which could be called a briefing. The reference is to a single sentence in a two-hour Committee meeting, and a singularly obscure sentence at that.

This sentence was substantially repeated in a meeting on March 13.

In no event was the briefing "full," "current," or "prior" as required by the Intelligence Oversight Act of 1980—a measure I helped write.

If this action was important enough for the President to have approved it in February, it was important enough for the Committee to have been informed in February.

In the public hearing on the confirmation of John J. McMahon as Deputy Director of Central Intelligence I remarked that with respect to intelligence matters the oversight function necessarily involves a trust relationship between the committee and the community because we cannot knowwhat we are not told, and therefore must trust the leaders of the community to inform us.

I had thought this relationship of trust was securely in place. Certainly the career service gave every such indication. Even so, something went wrong, and the seriousness of this must be expressed.

I will submit my resignation when Senator Goldwater returns from the Far East.[5]

Now here is the point.

All references by Mr. Casey and his associates were made to committee hearings or individual briefings which had taken place after the event. Two to three months after the event, to be exact.

This was an immensely successful deception. Individuals came forward to attest that they had, in fact, been

briefed, or that there was indeed such and such a sentence on such and such a page of testimony.

This completely obscured the essential fact that the committee had not been briefed in advance.

Senator Goldwater knew this. I knew this. Clearly few others knew it save those who were trying to throw sand in our eyes.

May I say to the Senate that I realized at the time that my action would not be understood. There was just too much to explain: briefing before as against briefing after; the direct involvement of the United States; the clear effort at deception by Mr. Casey. Clear to me, that is, but to few others. The best journalists were skeptical; the harshest editorialists were, well, derisive.

I wish to record my judgment that Mr. McFarlane was misled along with many others. After my proposed resignation, he volunteered to me, in a telephone conservation, that either what he had been told was "disingenous or outright wrong." I believe Mr. Casey lied to him, as to so many others. In the Iran-Contra hearings, this exchange took place with Senator SARBANES.

Mr. SARBANES. Did you know about the mining of the Nicaraguan Harbor?

Mr. MCFARLANE. Yes, sir.

Mr. SARBANES. Did you think that should have been consulted with the Intelligence Committee?

Mr. MCFARLANE. Yes, sir.

Mr. SARBANES. It wasn't done.

Mr. MCFARLANE. No, sir.

On the other hand, Mr. Casey understood. On April 25, he sent a handwritten note of apology to Senator Goldwater, and the next day apologized in person to the committee. I thereupon agreed to stay on as vice chairman.[6]

Senator Goldwater and I wondered whether the whole matter might simply have been a misunderstanding. The statute spoke of significant anticipated activities. Very well, what was significant? Perhaps Mr. Casey and the intelligence community hadn't thought the mining was such, even though we did. We decided we would try to interpret the statute, much as judges often do. What was "significant"? I believe it was I who came up with a working definition. To wit, anything the President signed. Only so many pieces of paper get to the President's desk. There are things the military, the Agency, whatever, would not do without his direct order—things they would not do without his certain knowledge. Very well. If you see the President's signature, report to the committee.

We drew up an accord, as we called it. An accord between the committee and the Agency, but with the approval of the President. This was obtained by Mr. McFarlane. Again evidence, in my view, of his innocence in this sordid conspiracy. It was signed by Mr. Casey, Senator Goldwater, and by me, and dated June 6, 1984:[7]

PROCEDURES GOVERNING REPORTING TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE (SSCI) ON COVERT ACTION

The DCI and the SSCI agree that a planned intelligence activity may constitute a "significant anticipated intelligence activity" under section 501 of the National Security Act of 1947 (the "Intelligence Oversight Act of 1980") even if the planned activity is part of an ongoing covert action operation within the scope of an existing Presidential Finding pursuant to the Hughes-Ryan Amendment (22 U.S.C. 2422). The DCI and the SSCI further agree that they may better discharge their respective responsibilities under the Oversight Act by reaching a clearer understanding concerning reporting of covert action activity. To this end the DCI and the SSCI make the following representations and undertakings, subject to the possible exceptional circumstances contemplated in the Intelligence Oversight Act:

1. In addition to provide the SSCI with the text of new Presidential Findings concerning covert action, the DCI will provide the SSCI with the contents of the accompanying scope paper following approval of the Finding. The contents of the scope paper will be provided in writing unless the SSCI and the DCI agree that an oral presentation would be preferable. Any subsequent modification to the scope paper will be provided to the SSCI.

2. The DCI also will inform the SSCI of

any other planned covert action activities for which higher authority or Presidential approval has been provided, including, but not limited to, approvals of any activity which would substantially change the scope of an ongoing covert action operation.

3. Notification of the above decisions will be provided to the SSCI as soon as practicable and prior to the implementation of the actual activity.

4. The DCI and the SSCI recognize that an activity planned to be carried out in connection with an ongoing covert action operation may be of such a nature that the Committee will desire notification of the activity prior to implementation, even if the activity does not require separate higher authority or Presidential approval. The SSCI will, in connection with each ongoing covert action operation, communicate to the DCI the kinds of activities (in addition to those described in Paragraphs 1 and 2) that it would consider to fall in this category. The DCI will independently take steps to ensure that the SSCI is also advised of activities that the DCI reasonably believes fall in this category.

5. When briefing the SSCI on a new Presidential Finding or on any activity described in paragraphs 2 or 4, the presentation should include a discussion of all important elements of the activity, including operational and political risks, possible repercussions under treaty obligations or agreements, and any special issues raised under U.S. law.

6. To keep the SSCI fully and currently informed on the progress and status of each covert action operation, the DCI will provide to the SSCI: (A) a comprehensive annual briefing on all covert action operations: and (B) regular information on implementation of each ongoing operation, with emphasis on aspects in which the SSCI has indicated particular interest.

7. The DCI and the SSCI agree that the above procedures reflect the fact that covert action activities are of particular sensitivity, and it is imperative that every effort be made to prevent their unauthorized disclosure. The SSCI will protect the information provided pursuant to these notification procedures in accordance with the procedures set forth in S. Res. 400, and with special regard for the extreme sensitivity of these activities. It is further recognized that public reference to covert action activities raises serious problems for the United States abroad, and, therefore, such references by either the Executive or Legislative Branches are inappropriate. It is also recognized that the compromise of classified information concerning covert activities does not automatically declassify such information. The appearance of references to such activities in the public media does not constitute authorization to discuss such activities. The DCI and the SSCI recognize that the long established policy of the U.S. Government is not to comment publicly on classified intelligence activities.

8. The DCI will establish mechanisms to assure that the SSCI is informed of planned activities as provided by paragraphs 1 through 4, and that the Committee is fully and currently informed as provided by paragraph 6. The DCI will describe these mechanisms to the SSCI.

9. The SSCI, in consultation with the DCI when appropriate, will review and, if necessary, refine the mechanisms which enable it to carry out its responsibilities under the Intelligence Oversight Act.

10. The DCI and the SSCI will jointly review these procedures no later than one year after they become operative, in order to assess their effectiveness and their impact on the ability of the DCI and the Committee to fulfill their respective responsibilities.

BARRY GOLDWATER,
Chairman, SSCI.
DANIEL PATRICK MOYNIHAN,
Vice Chairman, SSCI.
WILLIAM J. CASEY.

JUNE 6, 1984.

Note the provision that we would review the matter in a year's time. This review did not occur until June 1986. By that time Senator Goldwater and I had rotated off the committee, and were succeeded by our friends, Senators DURENBERGER and LEAHY. I perhaps shouldn't say, but I gather Mr. Casey simply delayed matters as he was inclined to do. (On June 6, 1984, we had to send the committee counsel out to CIA headquarters with instructions not to return until he had Mr. Casey's signature. He had to wait the whole day.) Nonetheless, 2 years later the review did finally take place, and the second written understanding was signed. (Hence the term "Casey Accords").[8]

ADDENDUM TO PROCEDURES GOVERNING REPORTING TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE ON COVERT ACTION

1. In accordance with Paragraph 10 of the Procedures Governing Reporting to the SSCI on Covert Action, executed on June 6, 1984, the SSCI and the DCI have jointly reviewed the Procedures in order to assess their effectiveness and their impact on the ability of the Committee and the DCI to fulfill their respective responsibilities under section 501 of the National Security Act of 1947.

2. The Committee and the DCI agree that the Procedures have worked well and that they have aided the Committee and the DCI in the fulfillment of their respective responsibilities. Procedures set forth below:

In accordance with the covert action approval and coordination mechanisms set forth in NSDD 159, the "advisory" format will be used to convey to the SSCI the substance of Presidential Findings, scope papers, and memoranda of notification.

Advisories will specifically take note of any instance in which substantial nonroutine support for a covert action operation is to be provided by an agency or element of the U.S. Government other than the agency tasked with carrying out the operation, or by a foreign government or element thereof. It is further agreed that advisories will describe the nature and scope of such support.

In any case in which the limited prior notice provisions of section 501(a)(1)(B) of the National Security Act are invoked, the advisory or oral notification will affirm that the President has determined that it is essential to limit prior notice. It is further agreed that in any section 501(a)(1)(B) situation, substantive notification will be provided to the Chairman and Vice Chairman of the SSCI at the earliest practicable moment, and that the Chairman and Vice Chairman will assist to the best of their abilities in facilitating secure notification of the Majority and Minority leaders of the Senate if they have not already been notified. It is understood that responsibility for accomplishment of the required notification rests with the Executive Branch.

It is understood that paragraph 6 of the Procedures, which requires that the SSCI shall be kept fully and currently informed of each covert action operation, shall include significant developments in or related to covert action operations.

The DCI will make every reasonable effort to inform the Committee of Presidential Findings and significant covert action activities and developments as soon as practicable.

3. In accordance with paragraph 4 of the Procedures, the DCI recognizes that significant implementing activities in military or paramilitary covert action operations are matters of special interest and concern to the Committee. It is agreed, therefore, that notification of the Committee prior to implementation will be accomplished in the following situations, even if there is no requirement for separate higher authority or Presidential approval or notification:

Significant military equipment actually is to be supplied for the first time in an ongoing operation, or there is a significant change in the quantity or quality of equipment provided;

Equipment of identifiable U.S. Government origin is initially made available in addition to or in lieu of nonattributable equipment;

There is any significant change involving the participation of U.S. military or civilian staff, or contractor or agent personnel, in military or paramilitary activities.

4. The DCI understands that when a covert action operation includes the provision of material assistance or training to a foreign government, element, or entity that simultaneously is receiving the same kind of U.S. material assistance or training overtly, the DCI will explain the rationale for the covert component.

5. The DCI understands that the Committee wishes to be informed if the President ever decides to waive, change, or rescind any Executive Order provision applicable to the conduct of covert action operations.

6. The Committee and the DCI recognize that the understandings and undertakings set forth in this document are subject to the possible exceptional circumstances contemplated in section 501 of the National Security Act.

7. The Procedures Governing Reporting to the SSCI on covert action, as modified by this agreement, will remain in force until modified by mutual agreement.

DAVE DURENBERGER,
SSCI Chairman.
PAT LEAHY,
SSCI Vice Chairman.
WILLIAM J. CASEY.

JUNE 5, 1986.

It is painful, of course, to record what all Senators know. Five months earlier, on January 17, 1986, the President had signed what we call a finding which authorized the shipment of arms to Iran and explicitly provided that the Intelligence Committees would not be told.

Thus had the practice of deception

mutated into a policy of deceit.

I will not detain the Senate longer, but would like to ask my distinguished colleagues whether this account of events comports with their understanding?

I see the distinguished chairman of the committee has risen.

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank my distinguished colleague from New York for the history which he has presented to the record and the information which he has shared with our colleagues tonight. The Senator from New York performed invaluable service during his time on the Intelligence Committee and his service as the distinguished vice chairman of that committee.

So often as we deliberate on legislative matters of great importance, we have missing the historical record, we do not have the perspective with which we should be viewing the current issue. I think the Senator from New York has given us that record and that perspective in the remarks he has just made. He has, indeed, given fully accurate rendition of the events that occurred during that period of time. He has given us an indication of the kind of agreement that was worked out partly through his efforts with the executive branch at that time. It indicates to us how long this issue has been with us, how long there have been ambiguities in the statute that the committees and the executive branch have tried to clarify through joint agreements. But, unfortunately, this history also indicates to us the reason why we must now consider statutory enactments. We have had letters of agreement, we have had memoranda of understanding. Actually, we have reduced to writing and jointly executed agreements in the past. But those agreements, unfortunately, do not have the force of law. They can be changed. They do not have the force of statutory enactment. And the history in many ways is a sad history, but it is a history that we cannot disregard. It is a clear indication that those things that are agreed upon in letter can be changed, can be ignored.

I commend the Senator from New York. I thank him again personally for bringing this history to us. The Senator from New York has performed a very great service to this body in recounting this history for us. I think he has, in the information he has given to us, given a very clear presentation to the Sentate that argues for the necessity of the statutory enactment that we are now considering.

So again I salute him. I pay tribute to him for the contribution he has made to the deliberations on this issue. He is, indeed, one of the pioneers in the Senate in terms of giving thought and in dedicating his own very substantial intellectual energies to this particular question.

I thank him again and indicate again that the record as he has given it is accurate. I hope that my colleagues will consider it because it is certainly instructive as to why we must now act if we are to set up a system that will serve us well and with certainty in the future.

Mr. MOYNIHAN. I thank the distinguished chairman for his generous remarks which are more appreciated by the Senator from New York than perhaps he realizes. Those were not easy times in the spring of 1984.

Might I also say to the distinguished Senator from Oklahoma that the bill he and the distinguished Senator from Maine have introduced addresses this problem of congressional notification most effectively? It is of particular importance that under this legislation, "special activities"—that is, covert actions—would have to be authorized by a written finding; and this finding would have to be:

Reported to the Intelligence Committees prior to the initiation of the activities authorized, and in no event more than forty-eight hours after such finding is signed or the determination is otherwise made by the President.

The bill also provides that "On rare occasions when time is of the essence," special activities may begin prior to such reporting, but notice shall be given no later than 48 hours after the signing of the finding which authorizes the activities. And under extraordinary circumstances, the President may limit this reporting to the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate.

However, while the Intelligence Oversight Act of 1988 provides a much-needed statutory response to the Iran-Contra affair, we must not assume that enactment of this legislation will create an absolute bar to future abuses. Executive officials both ignored and sought to evade the law in Iran-Contra; they may do so again. Law, no more than less formal understandings, cannot be proof against deliberate deceit. That is why Bryce Harlow used to say that trust is the coin of the realm. Debase that coin and all is lost.

Mr. Draper concluded the last of his New York Review articles with these two paragraphs:

Institutional changes have been tried without long-term success. A conniving CIA director with the backing of a President who thinks in slogans can change or get around the rules whatever they are. The congressional oversight committees usually know as much as they are told and often do not wish to be responsible for knowing too much. When the Nicaraguan harbors were mined by the CIA in 1984, the Senate Intelligence Committee learned about it after the damage was done. To his credit, Senator Daniel Patrick Moynihan resigned from the committee in protest—an act now so rare that it was regarded as a personal eccentricity. Casey apologized and Moynihan relented. Casey did not change his ways; he merely became stealthier and soon inveigled Oliver North into covering for the CIA.

Yet Moynihan's short-lived protest suggests what is needed to hold covert operations in check. It is too much to expect an administration to police itself. In our system the only safeguard is the old one of checks and balances. It is as old as it is because no one has thought of anything better in a democratic, constitutional order. It is easy for Senators and Representatives to strike a high and mighty moral pose in congressional hearings on executive malfeasance. During the entire Iran-Contra hearings, almost no attention was paid to the inattention and ineffectiveness of Congress while all the skullduggery was going on. If checks and balances cease to work in our system, the rogue elephant will almost surely rampage again.[8]

I include this as a caution to those who will succeed to these responsibilities, and with what I hope is an ample understanding that in our brief authority, for all that we tried, we failed.

Mr. President, I ask unanimous consent that the footnotes to my statement be printed in the RECORD.

There being no objection, the footnotes were ordered to be printed in the RECORD, as follows:

FOOTNOTES

[1] Theodore Draper, "The Rise of the American Junta," New York Review of Books, Oct. 8, 1987, p. 47.

[2] "Report of the Congressional Committees Investigating the Iran-Contra Affair," p. 36. Mines were later laid at El Bluff on Feb. 24 and 25, and at Corinto on Feb. 29.

[3] David Rogers, "U.S. Role in Mining Nicaraguan Harbors Reportedly Is Larger Than First Thought," Wall Street Journal, Apr. 6, 1984, p. 6.

[4] CIA Employee Bulletin No. 1113, Apr. 12, 1984, signed by DCI William J. Casey.

[5] Public statement by Senator DANIEL PATRICK MOYNIHAN, April. 15, 1985.

[6] Please see Philip Taubman, "Moynihan to Keep Intelligence Post," New York Times, Apr. 27, 1984, p. 1.

[7] "Procedures Governing Reporting to the Senate Select Committee on Intelligence (SSCI) on Covert Action," June 6, 1984.

[8] Theodore Draper, "An Autopsy," New York Review of Books, Dec. 17, 1987, p. 75.

March 4, 1988

Mr. COHEN. Mr. President, yesterday I was not on the floor at the time the Senator from New York had presented a very eloquent statement to this body. I simply want to go on record in support of the recitation of the facts that he presented to us in the Senate.

I served on the committee at the time when he was vice chairman of the Intelligence Committee. Indeed, I recall very vividly the events as they unfolded. They were precisely as Senator MOYNIHAN indicated during his statement yesterday.

I think, in essense, what the Senator from New York was saying is that we have an institutional need to know. I want to take this opportunity to express my endorsement of the comments that he made yesterday and to associate myself with his remarks.

From: John Helgerson

28 MAR 1988

___We plan to prepare an
answer for your signature.

___We plan to prepare an
answer for my signature.

✓

___No answer expected or required

___John, I prefer to_____

_____

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PROCEEDINGS AND DEBATES OF THE 100th CONGRESS, SECOND SESSION

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Senate

INTELLIGENCE OVERSIGHT ACT

Mr. MOYNIHAN. Mr. President, I rise in support of the Intelligence Oversight Act of 1988. I do so with considerable pride in this body, in the Senate Select Committee on Intelligence, in its distinguished chairman, Senator DAVID L. BOREN, and its distinguished vice chairman, Senator WILLIAM S. COHEN who have produced this measure.

I rise also with a sense of the precariousness and tentativeness of all institutions, not least those of government. The Intelligence Oversight Act of 1988 is our first major legislative response to the Report of the Congressional Committees Investigating the Iran-Contra Affair. In the history of the American Republic, I do not believe there has ever been so massive a hemorrhaging of trust and integrity. The very processes of American Government were put in harm's way by a conspiracy of faithless or witless men: sometimes both.

In the course of those hearings our learned and incisive colleague, PAUL SARBANES of Maryland, began using the term "junta" to refer to individuals engaged in the assorted conspiracies that are subsumed under what we have come to call Iran-Contra. In an extraordinary series of articles in the New York Review of Books, one of which is entitled "The Rise of the American Junta," Theodore Draper noted that when Senator SARBANES began using that term "Secretary of Defense Caspar Weinberger did not demur at its use."

Draper begins his series with this portentous summation:

> If ever the constitutional democracy of the United States is overthrown, we now have a better idea of how this is likely to be done.[1]

I would note that Mr. Draper is a scholar of great eminence whose special interest has been the rise of totalitarian governments, especially totalitarian Marxist-Leninist governments.

I was present at the outset of this challenge to American constitutional government. I am witness to the first acts of deception that gradually mutated into a policy of deceit.

I saw a program of opposition to subversion abroad transformed into a policy of subversion at home.

I would wish to share this witness with the Senate today, and especially with the managers of this legislation.

Specifically, I became a member of the Senate Select Committee on Intelligence in 1977, the second year of its existence and the first of my service in the Senate. I was clearly a junior member, but well recall my conversation with the then-chairman, the distinguished Senator for Hawaii, Mr. INOUYE. I was, he said, and as I suppose I still am, the only member of the body to have served as an American Ambassador—in India and at the United Nations—and thus had direct experience with the intelligence services. Hence, I might be of some use to my otherwise more experienced col-

leagues. I was happy to accept Senator INOUYE's invitation.

Four years later I became vice chairman, serving opposite a revered friend, Barry Goldwater of Arizona. Might I note for others who might read these words that only in the most special circumstances do Senate committees have a vice chairman, who presides in absence of the full chairman. This is, among other things, a charge to the strictest bipartisanship.

Now the essence of the legislation concerning oversight by the House and Senate Committees was that Congress be informed in advance of important covert actions. More specifically, the Intelligence Oversight Act of 1980 established the principle that the Intelligence Committees would be kept "fully and currently informed of all intelligence activities" within the responsibility of the CIA, including any "significant anticipated intelligence activity." Moreover, the Intelligence Authorization Act for fiscal year 1981 amended the Foreign Assistance Act of 1961 to make clear that "each operation conducted by or on behalf of the Central Intelligence Agency in a foreign country, other than activities intended soley for obtaining necessary intelligence, shall be a significant anticipated intelligence activity * * *" There was also a provision that if a matter of great urgency and sensitivity was involved, the President could inform the Congress in a timely fashion, and he need only inform the chairman and vice chairman of the Intelligence Committees, the Speaker, House minority leader and majority and minority leaders of the Senate.

This was an exception provided for situations of great urgency or great delicacy, and was understood by all. The committee, for example, was not told in advance of the Iran rescue effort of April 25, 1980. Nor need we have been. But these are special occasions; most intelligence is routine, and soon a routine seemed in place.

On the occasion that our great good friend EDWARD P. BOLAND finished his 8-year term on the House Select Committee on Intelligence, there was a reception. I was asked to speak briefly and said this: It being well established that in order for an activity in the executive branch to flourish, it needs a pair of committees in the Congress to look after it, future historians would wonder that it took almost a generation for something called the Intelligence community to figure this out.

For indeed the intelligence community did flourish. Budgets grew—beginning in the Carter administration—as never before. And trust burgeoned. Or such was my impression.

An informal practice commenced of the CIA briefing only the chairman and vice chairman in situations of special sensitivity, leaving it to them to decide whether to brief the full committee.

I can further attest that during my 4 years as vice chairman, these briefings were frequent—sometimes to the point of seeming endless. Some had a measure of the dramatic: I was summoned from a lecture hall at the Woodrow Wilson Center in the Smithsonian Building to be told of the impending invasion of Grenada. I was happy to have the information, although I recall asking the then-Deputy Director of the Agency in what sense this was to be a covert operation. No matter; the briefings grew more extensive and were, I think, useful to the community. On more than one occasion a particularly exotic notion failed to survive Senator Goldwater's incredulity. Well, that is what oversight is supposed to be.

Then came The Fall.

For reasons not as yet fully understood, and in any event not central to this discussion, the Reagan Administration decided to involve the United States directly in the conflict in Nicaragua. Specifically, on January 7, 1984, magnetic mines were placed in Sandino Harbor under the direction of the Central Intelligence Agency.[2]

By any standards, this was a significant event. It was arguably a belliger-

ent act, and a violation of international law. (The International Court of Justice has so ruled.) In any event, it was something the Intelligence Committees should have been told about in advance, and which by any previous experience we would have expected to have been informed of in advance.

We were not.

Now to an essential detail.

Senator Goldwater and I, and I assume anyone the least interested in the area, knew full well that beginning in early January harbors were being mined in Nicaragua. Much effort was made by the Contras to publicize this fact. After all, the putative object of the mining was to keep shipping away. (I forbear comment on the dimness of using mere percussion mines, which might keep away Mexican oil tankers but would certainly not dissuade Bulgarian freighters crammed with Soviet armaments.) What we did not know was that this mining was carried out by the United States. This was concealed from us.

On April 6, 1984, this fact was revealed in the Wall Street Journal in an article by David Rogers.

UNITED STATES ROLE IN MINING NICARAGUAN HARBORS REPORTEDLY IS LARGER THAN FIRST THOUGHT

WASHINGTON.—The Reagan administration's role in the mining of Nicaraguan harbors is larger than previously disclosed, according to sources who say that units operating from a ship controlled by the Central Intelligence Agency in the Pacific participated in the operation.

Though anti-Sandinista insurgents have claimed credit for the mining, a source familiar with CIA briefings on the operation said that the units operating from the ship are self-contained, and are composed of Salvadorans and other Latin Americans from outside Nicaragua * * *

The Senate Intelligence Committee hasn't had a full briefing on the operation, but CIA Director William Casey recently appeared before the House Intelligence Committee, where details of the mining were apparently first disclosed to Members of Congress.[3]

This news came as a shock to Senator Goldwater and to me. We had felt a system was in place; we realized it was not. On April 9, Senator Goldwater sent a public letter to Mr. Casey.

UNITED STATES SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, April 9, 1984.

Hon. WILLIAM J. CASEY,
Director of Central Intelligence, Washington, DC.

DEAR BILL: All this past weekend, I've been trying to figure out how I can most easily tell you my feelings about the discovery of the President having approved mining some of the harbors of Central America.

It gets down to one, little, simple phrase: I am ——— off!

I understand you had briefed the House on this matter. I've heard that. Now, during the important debate we had all last week and the week before, on whether we would increase funds for the Nicaragua program, we were doing all right, until a Member of the Committee charged that the President had approved the mining. I strongly denied that because I had never heard of it. I found out the next day that the CIA had, with the written approval of the President, engaged in such mining, and the approval came in February!

Bill, this is no way to run a railroad and I find myself in a hell of a quandary. I am forced to apologize to the Members of the Intelligence Committee because I did not know the facts on this. At the same time, my counterpart in the House did know.

The President has asked us to back his foreign policy. Bill, how can we back his foreign policy when we don't know what the hell he is doing? Lebanon, yes, we all knew that he sent troops over there. But mine the harbors in Nicaragua? This is an act violating international law. It is an act of war. For the life of me, I don't see how we are going to explain it.

My simple guess is that the House is going to defeat this supplemental and we will not be in any position to put up much of an argument after we were not given the information we were entitled to receive; particularly, if my memory serves me correctly, when you briefed us on Central American just a couple of weeks ago. And the order was signed before that.

I don't like this. I don't like it one bit from the President or from you. I don't think we need a lot of lengthy explanations. The deed has been done and, in the future, if anything like this happens, I'm going to raise one hell of a lot of fuss about it in public.

Sincerely,

BARRY GOLDWATER,
Chairman.

Three days after that Mr. Bud McFarlane, then National Security Advisor, gave an address at the Naval Academy in which he stated that "Every important detail of [the mining operation] was shared in full by the proper congressional oversight committees."

The same day, Mr. Casey issued the following Employees Bulletin to CIA employees:

APRIL 12, 1984.

EMPLOYEE BULLETIN

RECENT PRESS ARTICLES

1. Knowing that all Agency employees are interested in a number of recent press articles saying that the Agency had not briefed Congress on covert action programs in Central America, it is important for all of us to know the facts.

2. What you may have read in the press on this subject is not true. In accordance with prevailing practice, the Agency did indeed brief our two Oversight Committees on the matters discussed in the press during this week. In particular:

a. We briefed the members of the House Permanent Select Committee on Intelligence (HPSCI) on 31 January and 27 March 1984.

b. We briefed the members of the Senate Select Committee on Intelligence (SSCI) on 8 March and again on 13 March 1984;

c. In addition, we responded to specific detailed questions on these activities to individual Senators on 28 and 30 March, and briefed the SSCI staff members in detail on 2 April 1984;

d. Also, we have over the past several months replied in writing to written questions on this activity from the SSCI and the HPSCI.

3. In sum, we have fully met all statutory requirements for notifying our Intelligence Oversight Committees of the covert action program in Nicaragua. This Agency has not only complied with the letter of the law in our briefings, but with the spirit of the law as well.[4]

WILLIAM J. CASEY,
Director of Central Intelligence.

A report of Mr. McFarlane's Naval Academy address appeared in the Washington Times on April 13: "McFarlane Says Hill Knew About Mining."

On April 15, I announced that I would resign as Vice Chairman:

I have announced today that I will resign as Vice Chairman of the Senate Select Committee on Intelligence.

This appears to me the most emphatic way I can express my view that the Senate Committee was not properly briefed on the mining of Nicaraguan harbors with American mines from an American ship under American command.

An Employee Bulletin of the Central Intelligence Agency issued April 12 states that the House Committee was first briefed on 31 January, but the Senate Committee not until 8 March. Even then, as Senator Goldwater has stated, nothing occurred which could be called a briefing. The reference is to a single sentence in a two-hour Committee meeting, and a singularly obscure sentence at that.

This sentence was substantially repeated in a meeting on March 13.

In no event was the briefing "full," "current," or "prior" as required by the Intelligence Oversight Act of 1980—a measure I helped write.

If this action was important enough for the President to have approved it in February, it was important enough for the Committee to have been informed in February.

In the public hearing on the confirmation of John J. McMahon as Deputy Director of Central Intelligence I remarked that with respect to intelligence matters the oversight function necessarily involves a trust relationship between the committee and the community because we cannot knowwhat we are not told, and therefore must trust the leaders of the community to inform us.

I had thought this relationship of trust was securely in place. Certainly the career service gave every such indication. Even so, something went wrong, and the seriousness of this must be expressed.

I will submit my resignation when Senator Goldwater returns from the Far East.[5]

Now here is the point.

All references by Mr. Casey and his associates were made to committee hearings or individual briefings which had taken place after the event. Two to three months after the event, to be exact.

This was an immensely successful deception. Individuals came forward to attest that they had, in fact, been

briefed, or that there was indeed such and such a sentence on such and such a page of testimony.

This completely obscured the essential fact that the committee had not been briefed in advance.

Senator Goldwater knew this. I knew this. Clearly few others knew it save those who were trying to throw sand in our eyes.

May I say to the Senate that I realized at the time that my action would not be understood. There was just too much to explain: briefing before as against briefing after; the direct involvement of the United States; the clear effort at deception by Mr. Casey. Clear to me, that is, but to few others. The best journalists were skeptical; the harshest editorialists were, well, derisive.

I wish to record my judgment that Mr. McFarlane was misled along with many others. After my proposed resignation, he volunteered to me, in a telephone conservation, that either what he had been told was "disingenous or outright wrong." I believe Mr. Casey lied to him, as to so many others. In the Iran-Contra hearings, this exchange took place with Senator SARBANES.

Mr. SARBANES. Did you know about the mining of the Nicaraguan Harbor?

Mr. MCFARLANE. Yes, sir.

Mr. SARBANES. Did you think that should have been consulted with the Intelligence Committee?

Mr. MCFARLANE. Yes, sir.

Mr. SARBANES. It wasn't done.

Mr. MCFARLANE. No, sir.

On the other hand, Mr. Casey understood. On April 25, he sent a handwritten note of apology to Senator Goldwater, and the next day apologized in person to the committee. I thereupon agreed to stay on as vice chairman.[6]

Senator Goldwater and I wondered whether the whole matter might simply have been a misunderstanding. The statute spoke of significant anticipated activities. Very well, what was significant? Perhaps Mr. Casey and the intelligence community hadn't thought the mining was such, even though we did. We decided we would try to interpret the statute, much as judges often do. What was "significant"? I believe it was I who came up with a working definition. To wit, anything the President signed. Only so many pieces of paper get to the President's desk. There are things the military, the Agency, whatever, would not do without his direct order—things they would not do without his certain knowledge. Very well. If you see the President's signature, report to the committee.

We drew up an accord, as we called it. An accord between the committee and the Agency, but with the approval of the President. This was obtained by Mr. McFarlane. Again evidence, in my view, of his innocence in this sordid conspiracy. It was signed by Mr. Casey, Senator Goldwater, and by me, and dated June 6, 1984:[7]

PROCEDURES GOVERNING REPORTING TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE (SSCI) ON COVERT ACTION

The DCI and the SSCI agree that a planned intelligence activity may constitute a "significant anticipated intelligence activity" under section 501 of the National Security Act of 1947 (the "Intelligence Oversight Act of 1980") even if the planned activity is part of an ongoing covert action operation within the scope of an existing Presidential Finding pursuant to the Hughes-Ryan Amendment (22 U.S.C. 2422). The DCI and the SSCI further agree that they may better discharge their respective responsibilities under the Oversight Act by reaching a clearer understanding concerning reporting of covert action activity. To this end the DCI and the SSCI make the following representations and undertakings, subject to the possible exceptional circumstances contemplated in the Intelligence Oversight Act:

1. In addition to provide the SSCI with the text of new Presidential Findings concerning covert action, the DCI will provide the SSCI with the contents of the accompanying scope paper following approval of the Finding. The contents of the scope paper will be provided in writing unless the SSCI and the DCI agree that an oral presentation would be preferable. Any subsequent modification to the scope paper will be provided to the SSCI.

2. The DCI also will inform the SSCI of

any other planned covert action activities for which higher authority or Presidential approval has been provided, including, but not limited to, approvals of any activity which would substantially change the scope of an ongoing covert action operation.

3. Notification of the above decisions will be provided to the SSCI as soon as practicable and prior to the implementation of the actual activity.

4. The DCI and the SSCI recognize that an activity planned to be carried out in connection with an ongoing covert action operation may be of such a nature that the Committee will desire notification of the activity prior to implementation, even if the activity does not require separate higher authority or Presidential approval. The SSCI will, in connection with each ongoing covert action operation, communicate to the DCI the kinds of activities (in addition to those described in Paragraphs 1 and 2) that it would consider to fall in this category. The DCI will independently take steps to ensure that the SSCI is also advised of activities that the DCI reasonably believes fall in this category.

5. When briefing the SSCI on a new Presidential Finding or on any activity described in paragraphs 2 or 4, the presentation should include a discussion of all important elements of the activity, including operational and political risks, possible repercussions under treaty obligations or agreements, and any special issues raised under U.S. law.

6. To keep the SSCI fully and currently informed on the progress and status of each covert action operation, the DCI will provide to the SSCI: (A) a comprehensive annual briefing on all covert action operations: and (B) regular information on implementation of each ongoing operation, with emphasis on aspects in which the SSCI has indicated particular interest.

7. The DCI and the SSCI agree that the above procedures reflect the fact that covert action activities are of particular sensitivity, and it is imperative that every effort be made to prevent their unauthorized disclosure. The SSCI will protect the information provided pursuant to these notification procedures in accordance with the procedures set forth in S. Res. 400, and with special regard for the extreme sensitivity of these activities. It is further recognized that public reference to covert action activities raises serious problems for the United States abroad, and, therefore, such references by either the Executive or Legislative Branches are inappropriate. It is also recognized that the compromise of classified information concerning covert activities does not automatically declassify such information. The appearance of references to such activities in the public media does not constitute authorization to discuss such activities. The DCI and the SSCI recognize that the long established policy of the U.S. Government is not to comment publicly on classified intelligence activities.

8. The DCI will establish mechanisms to assure that the SSCI is informed of planned activities as provided by paragraphs 1 through 4, and that the Committee is fully and currently informed as provided by paragraph 6. The DCI will describe these mechanisms to the SSCI.

9. The SSCI, in consultation with the DCI when appropriate, will review and, if necessary, refine the mechanisms which enable it to carry out its responsibilities under the Intelligence Oversight Act.

10. The DCI and the SSCI will jointly review these procedures no later than one year after they become operative, in order to assess their effectiveness and their impact on the ability of the DCI and the Committee to fulfill their respective responsibilities.

BARRY GOLDWATER,
Chairman, SSCI.
DANIEL PATRICK MOYNIHAN,
Vice Chairman, SSCI.
WILLIAM J. CASEY.

JUNE 6, 1984.

Note the provision that we would review the matter in a year's time. This review did not occur until June 1986. By that time Senator Goldwater and I had rotated off the committee, and were succeeded by our friends, Senators DURENBERGER and LEAHY. I perhaps shouldn't say, but I gather Mr. Casey simply delayed matters as he was inclined to do. (On June 6, 1984, we had to send the committee counsel out to CIA headquarters with instructions not to return until he had Mr. Casey's signature. He had to wait the whole day.) Nonetheless, 2 years later the review did finally take place, and the second written understanding was signed. (Hence the term "Casey Accords").[8]

ADDENDUM TO PROCEDURES GOVERNING REPORTING TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE ON COVERT ACTION

1. In accordance with Paragraph 10 of the Procedures Governing Reporting to the SSCI on Covert Action, executed on June 6, 1984, the SSCI and the DCI have jointly reviewed the Procedures in order to assess their effectiveness and their impact on the ability of the Committee and the DCI to fulfill their respective responsibilities under section 501 of the National Security Act of 1947.

2. The Committee and the DCI agree that the Procedures have worked well and that they have aided the Committee and the DCI in the fulfillment of their respective responsibilities. Procedures set forth below:

In accordance with the covert action approval and coordination mechanisms set forth in NSDD 159, the "advisory" format will be used to convey to the SSCI the substance of Presidential Findings, scope papers, and memoranda of notification.

Advisories will specifically take note of any instance in which substantial nonroutine support for a covert action operation is to be provided by an agency or element of the U.S. Government other than the agency tasked with carrying out the operation, or by a foreign government or element thereof. It is further agreed that advisories will describe the nature and scope of such support.

In any case in which the limited prior notice provisions of section 501(a)(1)(B) of the National Security Act are invoked, the advisory or oral notification will affirm that the President has determined that it is essential to limit prior notice. It is further agreed that in any section 501(a)(1)(B) situation, substantive notification will be provided to the Chairman and Vice Chairman of the SSCI at the earliest practicable moment, and that the Chairman and Vice Chairman will assist to the best of their abilities in facilitating secure notification of the Majority and Minority leaders of the Senate if they have not already been notified. It is understood that responsibility for accomplishment of the required notification rests with the Executive Branch.

It is understood that paragraph 6 of the Procedures, which requires that the SSCI shall be kept fully and currently informed of each covert action operation, shall include significant developments in or related to covert action operations.

The DCI will make every reasonable effort to inform the Committee of Presidential Findings and significant covert action activities and developments as soon as practicable.

3. In accordance with paragraph 4 of the Procedures, the DCI recognizes that significant implementing activities in military or paramilitary covert action operations are matters of special interest and concern to the Committee. It is agreed, therefore, that notification of the Committee prior to implementation will be accomplished in the following situations, even if there is no requirement for separate higher authority or Presidential approval or notification:

Significant military equipment actually is to be supplied for the first time in an ongoing operation, or there is a significant change in the quantity or quality of equipment provided;

Equipment of identifiable U.S. Government origin is initially made available in addition to or in lieu of nonattributable equipment;

There is any significant change involving the participation of U.S. military or civilian staff, or contractor or agent personnel, in military or paramilitary activities.

4. The DCI understands that when a covert action operation includes the provision of material assistance or training to a foreign government, element, or entity that simultaneously is receiving the same kind of U.S. material assistance or training overtly, the DCI will explain the rationale for the covert component.

5. The DCI understands that the Committee wishes to be informed if the President ever decides to waive, change, or rescind any Executive Order provision applicable to the conduct of covert action operations.

6. The Committee and the DCI recognize that the understandings and undertakings set forth in this document are subject to the possible exceptional circumstances contemplated in section 501 of the National Security Act.

7. The Procedures Governing Reporting to the SSCI on covert action, as modified by this agreement, will remain in force until modified by mutual agreement.

DAVE DURENBERGER,
SSCI Chairman.
PAT LEAHY,
SSCI Vice Chairman.
WILLIAM J. CASEY.

JUNE 5, 1986.

It is painful, of course, to record what all Senators know. Five months earlier, on January 17, 1986, the President had signed what we call a finding which authorized the shipment of arms to Iran and explicitly provided that the Intelligence Committees would not be told.

Thus had the practice of deception

mutated into a policy of deceit.

I will not detain the Senate longer, but would like to ask my distinguished colleagues whether this account of events comports with their understanding?

I see the distinguished chairman of the committee has risen.

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank my distinguished colleague from New York for the history which he has presented to the record and the information which he has shared with our colleagues tonight. The Senator from New York performed invaluable service during his time on the Intelligence Committee and his service as the distinguished vice chairman of that committee.

So often as we deliberate on legislative matters of great importance, we have missing the historical record, we do not have the perspective with which we should be viewing the current issue. I think the Senator from New York has given us that record and that perspective in the remarks he has just made. He has, indeed, given fully accurate rendition of the events that occurred during that period of time. He has given us an indication of the kind of agreement that was worked out partly through his efforts with the executive branch at that time. It indicates to us how long this issue has been with us, how long there have been ambiguities in the statute that the committees and the executive branch have tried to clarify through joint agreements. But, unfortunately, this history also indicates to us the reason why we must now consider statutory enactments. We have had letters of agreement, we have had memoranda of understanding. Actually, we have reduced to writing and jointly executed agreements in the past. But those agreements, unfortunately, do not have the force of law. They can be changed. They do not have the force of statutory enactment. And the history in many ways is a sad history, but it is a history that we cannot disregard. It is a clear indication that those things that are agreed upon in letter can be changed, can be ignored.

I commend the Senator from New York. I thank him again personally for bringing this history to us. The Senator from New York has performed a very great service to this body in recounting this history for us. I think he has, in the information he has given to us, given a very clear presentation to the Sentate that argues for the necessity of the statutory enactment that we are now considering.

So again I salute him. I pay tribute to him for the contribution he has made to the deliberations on this issue. He is, indeed, one of the pioneers in the Senate in terms of giving thought and in dedicating his own very substantial intellectual energies to this particular question.

I thank him again and indicate again that the record as he has given it is accurate. I hope that my colleagues will consider it because it is certainly instructive as to why we must now act if we are to set up a system that will serve us well and with certainty in the future.

Mr. MOYNIHAN. I thank the distinguished chairman for his generous remarks which are more appreciated by the Senator from New York than perhaps he realizes. Those were not easy times in the spring of 1984.

Might I also say to the distinguished Senator from Oklahoma that the bill he and the distinguished Senator from Maine have introduced addresses this problem of congressional notification most effectively? It is of particular importance that under this legislation, "special activities"—that is, covert actions—would have to be authorized by a written finding; and this finding would have to be:

Reported to the Intelligence Committees prior to the initiation of the activities authorized, and in no event more than forty-eight hours after such finding is signed or the determination is otherwise made by the President.

The bill also provides that "On rare occasions when time is of the essence," special activities may begin prior to such reporting, but notice shall be given no later than 48 hours after the signing of the finding which authorizes the activities. And under extraordinary circumstances, the President may limit this reporting to the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate.

However, while the Intelligence Oversight Act of 1988 provides a much-needed statutory response to the Iran-Contra affair, we must not assume that enactment of this legislation will create an absolute bar to future abuses. Executive officials both ignored and sought to evade the law in Iran-Contra; they may do so again. Law, no more than less formal understandings, cannot be proof against deliberate deceit. That is why Bryce Harlow used to say that trust is the coin of the realm. Debase that coin and all is lost.

Mr. Draper concluded the last of his New York Review articles with these two paragraphs:

Institutional changes have been tried without long-term success. A conniving CIA director with the backing of a President who thinks in slogans can change or get around the rules whatever they are. The congressional oversight committees usually know as much as they are told and often do not wish to be responsible for knowing too much. When the Nicaraguan harbors were mined by the CIA in 1984, the Senate Intelligence Committee learned about it after the damage was done. To his credit, Senator Daniel Patrick Moynihan resigned from the committee in protest—an act now so rare that it was regarded as a personal eccentricity. Casey apologized and Moynihan relented. Casey did not change his ways; he merely became stealthier and soon inveigled Oliver North into covering for the CIA.

Yet Moynihan's short-lived protest suggests what is needed to hold covert operations in check. It is too much to expect an administration to police itself. In our system the only safeguard is the old one of checks and balances. It is as old as it is because no one has thought of anything better in a democratic, constitutional order. It is easy for Senators and Representatives to strike a high and mighty moral pose in congressional hearings on executive malfeasance. During the entire Iran-Contra hearings, almost no attention was paid to the inattention and ineffectiveness of Congress while all the skullduggery was going on. If checks and balances cease to work in our system, the rogue elephant will almost surely rampage again.[8]

I include this as a caution to those who will succeed to these responsibilities, and with what I hope is an ample understanding that in our brief authority, for all that we tried, we failed.

Mr. President, I ask unanimous consent that the footnotes to my statement be printed in the RECORD.

There being no objection, the footnotes were ordered to be printed in the RECORD, as follows:

FOOTNOTES

[1] Theodore Draper, "The Rise of the American Junta," New York Review of Books, Oct. 8, 1987, p. 47.

[2] "Report of the Congressional Committees Investigating the Iran-Contra Affair," p. 36. Mines were later laid at El Bluff on Feb. 24 and 25, and at Corinto on Feb. 29.

[3] David Rogers, "U.S. Role in Mining Nicaraguan Harbors Reportedly Is Larger Than First Thought," Wall Street Journal, Apr. 6, 1984, p. 6.

[4] CIA Employee Bulletin No. 1113, Apr. 12. 1984, signed by DCI William J. Casey.

[5] Public statement by Senator DANIEL PATRICK MOYNIHAN, Apri. 15, 1985.

[6] Please see Philip Taubman, "Moynihan to Keep Intelligence Post," New York Times, Apr. 27, 1984, p. 1.

[7] "Procedures Governing Reporting to the Senate Select Committee on Intelligence (SSCI) on Covert Action," June 6, 1984.

[8] Theodore Draper, "An Autopsy," New York Review of Books, Dec. 17, 1987, p. 75.

March 4, 1988

Mr. COHEN. Mr. President, yesterday I was not on the floor at the time the Senator from New York had presented a very eloquent statement to this body. I simply want to go on record in support of the recitation of the facts that he presented to us in the Senate.

I served on the committee at the time when he was vice chairman of the Intelligence Committee. Indeed, I recall very vividly the events as they unfolded. They were precisely as Senator MOYNIHAN indicated during his statement yesterday.

I think, in essense, what the Senator from New York was saying is that we have an institutional need to know. I want to take this opportunity to express my endorsement of the comments that he made yesterday and to associate myself with his remarks.